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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,974	04/26/2001	Richard J. Skalla SR.	915	9798

7590 09/03/2002

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EXAMINER

PASSANITI, SEBASTIANO

ART UNIT PAPER NUMBER

3711

DATE MAILED: 09/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/843,974

Applicant(s)

SKALLA, RICHARD J.

Examiner

Sebastiano Passaniti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 27 August 2001 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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DETAILED ACTION

This Office action is responsive to communication received 06/11/2002 –

Amendment A and Request for One Month Extension of Time.

The papers filed on 06/11/2002 (certificate of mailing dated 05/28/2002) have not been made part of the permanent records of the United States Patent and Trademark Office (Office) for this application (37 CFR 1.52(a)) because of damage from the United States Postal Service irradiation process. The above-identified papers, however, were not so damaged as to preclude the USPTO from making a legible copy of such papers. Therefore, the Office has made a copy of these papers, substituted them for the originals in the file, and stamped that copy:

COPY OF PAPERS
ORIGINALLY FILED

If applicant wants to review the accuracy of the Office's copy of such papers, applicant may either inspect the application (37 CFR 1.14(d)) or may request a copy of the Office's records of such papers (*i.e.*, a copy of the copy made by the Office) from the Office of Public Records for the fee specified in 37 CFR 1.19(b)(4). Please do **not** call the Technology Center's Customer Service Center to inquiry about the completeness or accuracy of Office's copy of the above-identified papers, as the Technology Center's Customer Service Center will **not** be able to provide this service.

If applicant does not consider the Office's copy of such papers to be accurate, applicant must provide a copy of the above-identified papers (except for any U.S. or foreign patent documents submitted with the above-identified papers) with a statement that such copy is a complete and accurate copy of the originally submitted documents. If applicant provides such a copy of the above-identified papers and statement within **THREE MONTHS** of the mail date of this Office action, the Office will add the original mailroom date and use the copy provided by applicant as the permanent Office record of the above-identified papers in place of the copy made by the Office. Otherwise, the Office's copy will be used as the permanent Office record of the above-identified papers (*i.e.*, the Office will use the copy of the above-identified papers made by the Office for examination and all other purposes). This three-month period is not extendable.

Claims 1-9 remain pending.

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At the outset, it is noted that the last Office action contained an inadvertent error on page 4 in discussing the rejection of the claims over Clark and Drake. The beginning of the first full paragraph of the Office action reads:

"Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Considering that a length..."

The passage should have read as follows:

"Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Drake. Considering that a length..."

While the opening passage incorrectly stated the basis for the rejection and incorrectly identified which claim was being rejected, the body of the claim correctly detailed the modification of the base reference to Clark to include the features shown by Drake, these features being required by claim 4. Further, while it appears that the applicant provided a complete response to the last Office action and while it also appears that the inconsistency in the language used in the last Office action was not a point of contention in the applicant's response, the citation of claim 4 in this current Office action as being unpatentable over Clark in view of Drake is not to be construed as a new grounds of rejection. Any inconvenience to the applicant for not properly addressing the rejection of claim 4 in the last Office action is sincerely regretted.

Applicant's cooperation is requested in addressing the objection to the drawings, as set forth in the last Office action.

Following is an action on the MERITS:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 6, 7 and 8 STAND rejected under 35 U.S.C. 102(b) as being anticipated by Parrish, as set forth in the last Office action, mailed 02/20/2002.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 9 STANDS rejected under 35 U.S.C. 103(a) as being unpatentable over Parrish in view of Taylor, as set forth in the last Office action, mailed 02/20/2002.

Claims 1-3 STAND rejected under 35 U.S.C. 102(b) as being anticipated by Hilton, as set forth in the last Office action, mailed 02/20/2002.

Claims 1 and 2 STAND rejected under 35 U.S.C. 102(b) as being anticipated by Clark, as set forth in the last Office action, mailed 02/20/2002.

Claims 3 and 5 STAND rejected under 35 U.S.C. 103(a) as being unpatentable over Clark, as set forth in the last Office action, mailed 02/20/2002.

Claim 4 STANDS rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Drake, as set forth in the last Office action, mailed 02/20/2002.

RESPONSE TO ARGUMENTS

In the arguments received 06/11/2002, the applicant contends that the present claimed invention includes a number of features that are unanticipated in the

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references. Moreover, the applicant contends that hindsight reconstruction has been utilized to reject the claims under §103 of the statute.

In response to these arguments, it is noted that the claims have been given their broadest reasonable interpretation. See In re Pearson, 181 USPQ 641. As for the rejection of claims 1, 2 and 6-8 as being anticipated by Parrish, the applicant argues that Parrish only discloses gauge acting leg elements (5). However, the claimed features of the present invention have been clearly anticipated by the Parrish reference. The fact that Parrish refers to member (5) as a gauge acting leg element and not as a first or second side ridge is not even remotely germane to the outstanding rejection of the claims. Parrish clearly shows a first and a second side ridge separated by a center bridge member, as broadly as claimed. A similar argument may be made regarding the rejection of the claims under §102 with respect to the Hilton and Clark references. Insofar as the rejection of the claims under §103, it is well-established that a reference is to be considered not only for what it expressly states, but also for what it would reasonably have suggested to one of ordinary skill in the art. See In re DeLisle, 160 USPQ 806 (CCPA 1968). The last Office action, mailed 02/20/2002, clearly sets forth a motivation for modifying or combining the prior art devices of record. No other explanation is deemed necessary here.

No claim is allowed.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note Figure 6 in Bandiero.

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THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sebastiano Passaniti whose telephone number is 703-308-1006. The examiner can normally be reached on Mon-Fri (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on 703-308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3579 for regular communications and 703-308-7768 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Sebastiano Passaniti
Primary Examiner
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S.Passaniti/sp
August 28, 2002